IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

REVIEW PETITION NO. 6 OF 2005
IN
SECOND APPEAL NO. 1117 OF 2004

Shri Bhiva Kesu Kharade & ors. ... Petitioners

V/s

Ramchandra Aba Kharade
(since deceased through his
legal heirs)
Kisan Ramchandra Kharade & ors. ... Respondents

Mr. Dilip Bodake for the petitioners.

Mr. V.A. Shastry for the respondents.

CORAM: P.V. KAKADE, JJ.

DATED: 1ST MARCH, 2005
(In chamber)

P.C.:

1. Heard both sides. Perused the impugned order as well as the grounds taken for seeking review of the order.

2. By order dated 2nd December, 2004, the second appeal was dismissed in limine considering the so-called substantial question of law sought to be raised in the appeal wherein both the Courts below had dismissed the suit of the appellant for perpetual injunction. The

only question of law sought to be raised was to the effect of jurisdiction of the Civil Court to entertain the suit. In that regard, it was held by this Court while dismissing the appeal that since the Writ Petition No. 4251 of 2001 came to be dismissed consequent to cancellation of certificate issued under Sec. 32-M of the B.T. & A. L. Act in favour of the petitioner, the Civil Court had jurisdiction to try and entertain the suits. In view of this position, there is no merit in the review petition.

3. The learned counsel for the petitioner sought to bring to my notice that there were two civil applications pending, out of which one was disposed of by order to the effect that, "Consequently, the civil application also stands dismissed with no order as to costs." In fact, by this order, both the civil applications should have been dismissed with no order as to costs but only due to typographical mistake it remains to be so mentioned. However, it is submitted today that the application seeking to produce additional evidence on record was not dismissed and is still pending, however, there is nothing to indicate that the said particular application was kept alive by the order. In view of this position, the review petition stands

dismissed with direction that both the civil applications are dismissed by the said order dated 2.12.2004.

Review petition stands dismissed with no order as to costs.

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